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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89217; File No. SR-CboeBZX-2020-029]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the JPMorgan Large Cap Growth ETF Under Rule 14.11(k), Managed Portfolio Shares**

July 2, 2020.

#### I. Introduction

On March 25, 2020, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to list and trade shares of the JPMorgan Large Cap Growth ETF under Rule 14.11(k), Managed Portfolio Shares. The proposed rule change was published for comment in the Federal Register on April 9, 2020.<sup>4</sup> On April 29, 2020, the Exchange filed Amendment No. 1 to the proposed

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 88551 (April 3, 2020), 85 FR 19971 (“Notice”).

rule change.<sup>5</sup> On May 15, 2020, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup> The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>8</sup>

The Exchange proposes to list and trade shares of the JPMorgan Large Cap Growth ETF (“Fund”) under BZX Rule 14.11(k), which governs the listing and trading of any series of Managed Portfolio Shares on the Exchange.<sup>9</sup> The shares of the Fund (“Shares”) will be issued by J.P. Morgan Exchange-Traded Fund Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management

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<sup>5</sup> In Amendment No. 1, the Exchange added the word “each” to clarify that the Adviser has implemented and will maintain a “fire wall” with respect to each affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio and Creation Basket (as defined below). Because the change in Amendment No. 1 clarifies a statement in the proposal and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2020-029/srcboebzx2020029-7135317-216172.pdf>.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 88888, 85 FR 31016 (May 21, 2020). The Commission designated July 8, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>8</sup> For more information regarding the Fund and the Shares, see Notice, supra note 4.

<sup>9</sup> As defined in BZX Rule 14.11(k)(3)(A), the term “Managed Portfolio Share” means a security that (a) represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (“1940 Act”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a creation unit,

investment company.<sup>10</sup> The investment adviser to the Trust will be J.P. Morgan Investment Management Inc. (the “Adviser”). JPMorgan Distribution Services, Inc. will serve as the distributor of the Fund’s Shares.

A. Description of the Fund

The Exchange states that the Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.<sup>11</sup>

According to the Exchange, the Fund will seek long-term capital appreciation. The Exchange

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or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a confidential account; (c) when aggregated into a redemption unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the confidential account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

<sup>10</sup> The Trust is registered under the 1940 Act. On February 3, 2020, the Trust filed a registration statement on Form N-1A relating to the Fund (File No. 811-22903) (“Registration Statement”). The Trust has submitted an application for exemptive relief (“Exemptive Application”) (File No. 812-15093). The Exchange states that the Exemptive Application incorporates by reference the terms and conditions of the exemptive relief granted to Precidian ETFs Trust, et al. See Investment Company Act Release No. 33477, May 20, 2019 (“Exemptive Order”). The Exchange states that it expects any exemptive relief granted to the Trust to be substantively identical to the Exemptive Order. The Exchange represents that the Fund will not be listed or traded on the Exchange until it receives all necessary exemptive relief and its Registration Statement is effective.

<sup>11</sup> Pursuant to the Exemptive Order, the permissible investments include only the following instruments that trade on a U.S. exchange contemporaneously with the Shares: exchange-traded funds (“ETFs”) and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts, and futures for which the reference asset the Fund may invest in directly or, in the case of an index future, based on an index of a type of asset that the Fund could invest in directly; as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds and repurchase agreements).

states that, typically, in implementing its strategy, the Fund will invest in common stocks of companies with a history of above-average growth or companies expected to enter periods of above-average growth.

B. Investment Restrictions

The Fund will not purchase any securities that are illiquid investments at the time of purchase and the Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.

The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(k). The Fund's holdings will be limited to and consistent with what is permissible under the Exemptive Order.

The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

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<sup>12</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange has obtained a representation from the issuer that the net asset value per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.<sup>14</sup> Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Verified Intraday Indicative Value ("VIIV")<sup>15</sup> will be widely disseminated

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<sup>14</sup> See BZX Rule 14.11(k)(4)(A)(ii).

<sup>15</sup> BZX Rule 14.11(k)(3)(B) defines "Verified Intraday Indicative Value" as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours (as defined in BZX Rule 1.5(w)) by the Reporting Authority (as defined in BZX Rule 14.11(k)(3)(H)).

by the Reporting Authority and/or one or more major market data vendors in one-second intervals during Regular Trading Hours, and must be disseminated to all market participants at the same time.<sup>16</sup> Moreover, the Fund's website will include a form of the prospectus and additional data relating to net asset value and other applicable quantitative information for the Fund, including any information regarding premiums/discounts that ETFs registered under the 1940 Act are required to provide or that are otherwise required under the Exemptive Order. Such website and information will be publicly available at no charge.

The Commission also notes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares, and will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>17</sup> Trading in the Shares also will be subject to BZX Rule 14.11(k)(4)(B)(iii)(b), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The

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<sup>16</sup> See BZX Rule 14.11(k)(4)(B)(i).

<sup>17</sup> See BZX Rule 14.11(k)(4)(B)(iii)(a).

Exchange states that the Adviser is not registered as a broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain a “fire wall” with respect to each such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio and Creation Basket.<sup>18</sup> Further, the Commission notes that any person related to the Fund’s investment adviser or to the Trust who makes decisions pertaining to the Fund’s portfolio composition or has access to information regarding the Fund’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio or changes thereto and the Creation Basket.<sup>19</sup> In addition, any person or entity, including an AP Representative,<sup>20</sup> custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Fund’s portfolio composition or changes thereto or its Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund portfolio or changes thereto or the Creation Basket.<sup>21</sup> Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information

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<sup>18</sup> See BZX Rule 14.11(k)(3)(E).

<sup>19</sup> See BZX Rule 14.11(k)(2)(D). The Exchange represents that any person related to the Adviser or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

<sup>20</sup> See BZX Rule 14.11(k)(3)(C).

<sup>21</sup> See BZX Rule 14.11(k)(2)(E).

concerning the composition of and/or changes to such Fund's portfolio or Creation Basket.<sup>22</sup>

Finally, the Exchange represents that trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Portfolio Shares,<sup>23</sup> and that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares.<sup>24</sup>

In support of this proposal, the Exchange represents that:

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<sup>22</sup> See id. The Exchange represents that any person or entity who has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio composition or changes thereto or the Creation Basket.

<sup>23</sup> See BZX Rule 14.11(k)(2)(C), which requires, as part of the surveillance procedures for Managed Portfolio Shares, the Fund's investment adviser to, upon request by the Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

<sup>24</sup> The Exchange represents that the Circular will discuss the following: (1) procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings will be disclosed within at least 60 days following the end of every fiscal quarter.

- (1) The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(k).
- (2) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.
- (3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain trading information, regarding trading in the Shares, and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions in which the Shares trade.
- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.<sup>25</sup>
- (6) The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and investments made by the Fund will be consistent with all requirements set forth in the Exemptive Application and Exemptive Order. The Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.

The Exchange represents that all statements and representations made in the filing regarding: (1) the description of the portfolio or reference assets; (2) limitations on portfolio

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<sup>25</sup> See 17 CFR 240.10A–3.

holdings or reference assets; (3) dissemination and availability of the VIIV, reference assets, and intraday indicative values; and (4) the applicability of Exchange rules constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>26</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>27</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-CboeBZX-2020-029), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>28</sup> 15 U.S.C. 78s(b)(1).

<sup>29</sup> 17 CFR 200.30-3(a)(12).